



GENERAL SERVICES ADMINISTRATION

48 CFR Part 552

[GSAR Case 2021-G522; Docket No. GSA-GSAR-2021-0028;

Sequence No. 1]

RIN 3090-AK39

General Services Administration Acquisition Regulation;

Contract Requirements for High-Security Leased Space

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: GSA is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to implement Section 4 requirements of the Secure Federal Leases from Espionage and Suspicious Entanglements Act (the Act or Secure Federal LEASEs Act). The Act addresses the risks of foreign ownership of Government-leased real estate and requires the disclosure of ownership information for high-security space leased to accommodate a federal agency.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to GSAR Case 2021-G522 to the Federal eRulemaking portal at

<https://www.regulations.gov> by searching for "GSAR Case 2021-G522". Select the link "Comment Now" that corresponds with "GSAR Case 2021-G522". Follow the instructions provided at the "Comment Now" screen. Please include your name, company name (if any), and "GSAR Case 2021-G522" on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

Instructions: Please submit comments only and cite "GSAR Case 2021-G522" in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Carroll, Procurement Analyst, at 817-253-7858 or GSARPolicy@gsa.gov, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or GSARRegSec@gsa.gov. Please cite GSAR Case 2021-G522.

SUPPLEMENTARY INFORMATION:

I. Background

On Dec. 31, 2020, the then president signed into law the Secure Federal Leases from Espionage and Suspicious Entanglements Act (Secure Federal LEASEs Act), (Pub. L. 116-276, 134 Stat. 3362). The Act imposes disclosure requirements regarding the foreign ownership, particularly “beneficial ownership,” of prospective lessors of “high-security leased space” (i.e., property leased to the Federal government having a security level of III or higher).

These requirements of the statute are applicable to leases by the U.S. General Services Administration (GSA), the Architect of the Capitol, “or the head of any Federal agency, other than the Department of Defense (DOD), that has independent statutory leasing authority” (Federal lessees). The Act is not applicable to DOD or to the intelligence community. In that regard, Section 2876 of the fiscal year (FY) 2018 National Defense Authorization Act (NDAA) (Pub. L. 115-91) already provides DOD similar authority to obtain ownership information with respect to its high-security leased space.

GSA implemented a regulatory action for Sections 3 and 5 of the Act, effective June 30, 2021, as an interim rule (GSAR 2021-G527,¹ 86 FR 34966). The interim rule applies to GSA and to agencies relying upon GSA’s leasing

¹ GSAR 2021-G527, Federal Register Document.

authority. This proposed rule addresses GSA's implementation of Section 4 of the Act.

The Act addresses national security risks identified in the Government Accountability Office (GAO) report, *GSA Should Inform Tenant Agencies When Leasing High-Security Space from Foreign Owners*, dated January 2017 (GAO-17-195). This report found certain high-security Federal agencies were in buildings owned or controlled by foreign entities. According to the report, most Federal tenants were unaware the spaces GAO identified were subject to foreign ownership or control, exposing these agencies to the heightened risk of surreptitious physical or cyber espionage by foreign actors. The report also noted GAO could not identify the owners of approximately one-third of the Federal government's high-security leases because such ownership information was unavailable for those buildings.

As the U.S. Government's "landlord," GSA serves as the central leasing agent for Federal leases and is responsible for managing and obtaining space on behalf of multiple Federal agencies. When GSA enters into a leasing agreement, the agency becomes the "tenant" of GSA, with GSA acting as the lessee of the property.

Prior to the interim rule, GSAR 2021-G527, GSA used information contained in the System for Award Management (SAM) to collect foreign ownership information for

potential lessors, including immediate or highest-level owners. However, as Congress recognized in the Act, SAM does not capture more nuanced forms of foreign control such as entities involved in financing properties or beneficial ownership. Following the implementation of the interim rule, for GSA and agencies relying upon GSA's leasing authority, foreign ownership information for potential lessors, including immediate or highest-level owners, is collected manually (paper copy) through the GSAR representation clause 552.270-33 (Foreign Ownership and Financing Representation for High-Security Leased Space). This proposed rule will expand that clause to address the representation clause to address beneficial ownership.

GSA is currently reviewing and investigating potential future implementation steps and potential updates through electronic means to implement the requirements of the Act, including externally (e.g., System for Award Management) or internally (e.g., GSA's Lease Offer Platform). As these alternatives are not yet available, this proposed rule will require reporting on an action-by-action basis.

What is "High-Security Leased Space"?

The statute defines "high security leased space" as "space leased by a Federal lessee that- (A) will be occupied by Federal employees for nonmilitary activities;

and (B) has a facility security level of III, IV or V, as determined by the Federal tenant in consultation with the Interagency Security Committee, the Department of Homeland Security, and the General Services Administration."

Facility security levels and the process for determining these are outlined in the Interagency Security Committees publication "The Risk Management Process."²

New Disclosure Requirements

Section 4 of the Act, specifically addressed in this proposed rule, imposes disclosure requirements for beneficial ownership:

- Subject to the development of GSA's government-wide plan for obtaining ownership information outlined in Section 4 of the Act, covered entities will be required to disclose information about beneficial ownership.

What is a "Beneficial Owner"?

Unlike the direct control-based immediate owner and highest-level owner, the Act defines the term "beneficial owner" as meaning "with respect to a covered entity, each natural person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise - (i) exercises control over the covered entity; or (ii) has a substantial interest in or receives substantial economic benefits from the assets of the

² Interagency Security Committees publication "The Risk Management Process", March 2021.

covered entity." However, a beneficial owner of a covered entity does not include: a minor child, a person acting as a nominee, intermediary, custodian, or agent on behalf of another person; a person acting solely as an employee of the covered entity and whose control over or economic benefits from the covered entity derives solely from the employment status of the person; a person whose only interest in the covered entity is through a right of inheritance or a creditor of the covered entity unless either also meets the definition of "beneficial owner."

The Act is one of several recent examples of congressional concern about foreign ownership and control and congressional action in the world of government contracting to help address potential national security concerns. See, e.g., FY 2021 NDAA (Pub. L. 116-283), section 819, Modifications to Mitigating Risks Related to Foreign Ownership, Control, or Influence of DOD Contractors and Subcontractors; section 885, Disclosure of Beneficial Owners in Database for Federal Agency Contract and Grant Officers; section 6403, Beneficial Ownership Information Reporting Requirements, and, as of June 30, 2021, GSAR 2021-G527, Immediate and Highest-Level Owner for High-Security Leased Space.

Because of the related rulemaking, there are several definitions of "beneficial owner" (or "beneficial ownership").

The United States Securities and Exchange Commission

(SEC) Definition

Section 885 (Disclosure of beneficial owners in database for Federal agency contract and grant officers) of the FY 2021 NDAA (Pub. L. 116-283)³ states that beneficial ownership has the meaning given under section 847 (Mitigating risks related to foreign ownership, control, or influence of Department of Defense contractors or subcontractors) of the FY 2020 NDAA (Pub. L. 116-92).⁴ Section 847 does not specifically define beneficial ownership but requires “beneficial ownership” to “be determined in a manner that is not less stringent than the manner set forth in section 240.13d-3 of title 17, Code of Federal Regulations.” This Code of Federal Regulations reference is the SEC definition.⁵ The SEC definition mainly concerns the beneficial owner of a security (e.g. stock/bond/option for a corporation), not the corporation or company-at-large.

Corporate Transparency Act Definition

The Corporate Transparency Act (CTA) definition can be found at section 6403 of the FY 2021 NDAA. This section defines “beneficial ownership” as, with respect to an entity, an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or

³ FY 2021 NDAA.

⁴ FY 2020 NDAA.

⁵ 17 CFR 240.13d-3.

otherwise (i) exercises substantial control over the entity; or (ii) owns or controls not less than 25 percent of the ownership interests of the entity.

Secure Federal LEASEs Act Definition

A "beneficial owner" is with respect to a covered entity, each natural person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise - (i) exercises control over the covered entity; or (ii) has a substantial interest in or receives substantial economic benefits from the assets of the covered entity.

GSA's Interpretation

GSA interprets that the SEC definition is too limiting for use in the representation clause because it's concerned with the beneficial owner of a security rather than a company or corporation. The Secure Federal LEASEs Act and the CTA definitions are similar. Both definitions similarly characterize a beneficial owner as someone who (i) controls a covered entity, or (ii) has a substantial interest. The primary difference between the two is related to "substantial interest." The Secure Federal LEASEs Act states that a beneficial owner is someone who "...has a substantial interest in or receives substantial economic benefits from the assets of the covered entity" while the CTA definition says a beneficial owner "owns or controls not less than 25 percent of the ownership

interests of the entity.” GSA interprets that the CTA definition meets the intent of the SFLA definition. As such, GSA intends to use the CTA definition (and therefore incorporates it into the GSAR representation clause at 552.270-33) because it’s more specific (“not less than 25 percent” as opposed to having to define “substantial interest” or “substantial economic benefits”) and because it would allow GSA to leverage Treasury’s Financial Crimes Enforcement Network’s (FinCEN) efforts to collect beneficial owner information for all corporations. GSA does not believe this definition to be “not less stringent” than the SEC definition.

Covered entities already provide certain information on immediate and highest-level ownership, per Office of Management and Budget (OMB) Control Numbers 9000-0097, 9000-0185, and 3090-0324. However, covered entities will need to provide additional disclosure of creditors who may be deemed beneficial owners if they either exercise substantial control over the covered entity or owns or controls not less than 25 percent of the ownership interests of the covered entity. Therefore, property owners will need to take this provision into account when considering financing options for leasing high-security space to the Federal Government.

Government-Wide Plan for Obtaining Ownership Information

Section 4 of the Act requires GSA, in conjunction with the Office of Management and Budget (OMB), to develop a Government-wide plan for agencies to identify all immediate, highest-level, or beneficial owners of high-security leased spaces before entering into a lease agreement with a covered entity for the accommodation of a Federal tenant in a high-security leased space.

The plan must require the disclosure of any immediate, highest-level, or beneficial owner that is a foreign person and notification by the Federal lessee of high-security space to the affected Federal tenant of such foreign ownership. The plan, however, must exclude collecting ownership information on widely held pooled-investment vehicles, mutual funds, trusts, or other pooled-investment vehicles. The Act requires GSA to submit the plan to specific Congressional committees by Dec. 31, 2021, and to implement the plan by Dec. 31, 2022. By Dec. 31, 2023, GSA will submit a report to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives on the status of the implementation of the plan, including the number of disclosures made. This plan is addressed separately, including in Federal Management Regulation (FMR) 201-102-1.

II. Requirements Contained in this Rulemaking and Related Rulemakings

With this document, GSA is proposing to implement Section 4 of the Act. GSA previously implemented Section 3 and Section 5 of the Act through separate rulemaking at GSAR 2021-G527 (86 FR 34966) on June 30, 2021.

Section 4 of the Act requires the identification of beneficial owners of high-security leased spaces and will be addressed through this GSAR Case 2021-G522 and FMR Case 2021-102-1. In addition, the Federal Acquisition Regulatory (FAR) Council has opened FAR Case 2021-005 which will implement sections 885 and 6403 of the NDAA for FY 2021 (Pub. L. 116-283) to require certain offerors to disclose beneficial ownership information in their offers for contracts over the simplified acquisition threshold. Section 3 (already implemented through separate rulemaking that also included Section 5)-

- Requires Federal lessees for high-security leased space to require covered entities to identify and disclose whether the owner of the leased space, including an entity involved in the financing thereof, is a foreign person or a foreign entity, including the country associated with the ownership entity, before entering into a lease agreement. Covered entities must provide Federal lessees such information-

- when first submitting proposals in response to a solicitation for offers issued by the lessee; and
- annually, to include the list of immediate or highest-level owners of the covered entity during the preceding one-year period of occupancy.
- Requires the Federal lessee to notify the Federal tenant in writing if such a disclosure of foreign ownership is made and consult with the tenant regarding any security concerns prior to awarding a new lease agreement.

Section 5 (already implemented through separate rulemaking that also included Section 3)-

- Requires that leases for high-security space include certain language regarding access to the high-security leased space by the covered entity and any member of the property management company.

As noted in GSAR Case 2021-G527, other agencies may need to do additional rulemaking, related to Sections 3 and 5, because the GSAR only governs the contract terms and conditions for leased space procured by GSA and its delegated agencies. Section 4 is similar in that regard. This proposed rule, and the GSAR, only governs the contract terms and conditions for leased space procured by GSA and its delegated agencies. Other agencies may need to

do additional rulemaking. Additionally, a separate Federal Management Regulation rule (2021-102-1) will be applicable to leases by the Architect of the Capitol, "or the head of any Federal agency, other than the Department of Defense (DOD), that has independent statutory leasing authority" (Federal lessees).

III. Authority for This Rulemaking

Title 40 of the United States Code (U.S.C.) Section 121 authorizes GSA to issue regulations, including in the GSAR, to control the relationship between GSA and contractors. In addition, the Secure Federal LEASEs Act, authorizes GSA, in consultation with OMB, to issue a Government wide plan for Federal agencies with independent lease authority to collect foreign ownership information for high-security leased space. The Government-wide plan will be addressed separately, including in the Federal Management Regulation 2021-102-1.

IV. Revised GSAR Requirements

With this rule, GSA is proposing to revise one GSAR representation clause. The revised representation is 552.270-33 (Foreign Ownership and Financing Representation for High-Security Leased Space). This representation clause applies to new lease awards, the exercise of options for current leases, lease extensions, and ownership changes for high-security leased space. Except where otherwise provided, the Act's disclosure

requirements, shall apply with respect to any lease or novation agreement entered into on or after December 31, 2022, involving high-security leased space. That includes new, renewal, succeeding, expansion, superseding, extension, and replacing leases and novations. The disclosure requirements specific to Section 3 already apply as of June 30, 2021.

The revised GSAR representation implemented at 552.270-33 now adds the requirement that offerors for high-security leased space identify whether the offeror does or does not have a beneficial owner(s), and if so, if the beneficial owner(s) is a foreign person(s). Where there is an affirmative disclosure of any immediate, highest-level, or beneficial owner that is a foreign person, the offeror or lessor must represent the name, current residential or business street address, and an identifying number or document that verifies identity as a United States person, foreign person, or foreign identity of each beneficial owner. This representation also applies upon extensions, exercise of renewal options and change of ownership/novations.

The disclosures required by Section 3 for immediate and highest-level owner are already captured by GSAR clause 552.270-33 implemented by GSAR Case 2021-G527 (86 FR 34966).

V. Expected Impact of the Rule

GSA anticipates that this rule will have an impact on current Federal lessors of high-security leased space, future potential lessors of high-security leased space, and the Federal lessor industry of high-security leased space. The rule seeks to ensure effective implementation and enforcement of the national security measures imposed by the Secure Federal LEASEs Act with minimal disruption to the mission of GSA and its Federal tenants and Federal lessors. As set forth in Section VI.(d) below, GSA recognizes the benefits that will result from this rule.

GSA notes that this rule is one of several actions with regard to the Secure Federal LEASEs Act and other statutes regarding foreign ownership by GSA, other agencies with lease authority promulgating their own rules, and by the FAR Council. GSA understands that the impact of actions dealing with foreign ownership, including specifically beneficial owners, is not well understood and is still being assessed.

In addition, GSA is seeking public comment, including, as indicated below, on the potential impact of this rule on Federal lessors. After considering the comments received, a final rule will be issued, taking into account and addressing the public comments. GSA plans to share public comments received on such questions with other agencies and the FAR Council.

VI. Regulatory Impact Analysis

The cost and benefit impacts of amending the General Services Administration Acquisition Regulation (GSAR) to implement the Section 4 requirements outlined in the Secure Federal LEASEs Act (SFLA) (Pub. L. 116-276) are discussed in the analysis below. This analysis was developed by GSA in consultation with agency procurement officials and the GSA Office of Leasing. Section VI.(h) of this rule is requesting specific feedback regarding the impact of this rule, as well as other pertinent policy questions of interest, in order to inform finalization of this and potential future subsequent rulemakings.

(a) Risks to Industry of Not Complying with SFLA

As a strictly contractual matter, an organization's failure to submit an accurate representation to the Government constitutes a breach of contract that can lead to cancellation, termination, and financial consequences. Therefore, it is important for contractors to develop a compliance plan that will allow them to submit accurate representations to the Government in the course of their offers.

GSA notes that this rule does not authorize GSA lease contracting officers to use the information disclosed by offerors as a differentiating factor for selection of a lease award, nor does it authorize GSA to terminate a lease, prevent a novation, or otherwise decline to make an award based on the disclosure. As such, GSA estimates that

this rule will not result in these activities, and therefore no moving costs have been included in this regulatory impact analysis.

(b) Contractor Actions Needed for Compliance

GSA assumes that most Federal lessors maintaining high-security leased space or Federal lessors that are competing for solicitations for high-security leased space are already familiar with the majority of the requirements of this rule, or, similarly, will not find the requirements of this interim rule as anything significantly more than what is currently expected. GSA previously implemented ownership disclosures requirements through internal policy,⁶ GSA's Request for Lease Proposals (or solicitations), and GSA's guidance through its public-facing Leasing Desk Guide⁷ and Leasing Alerts and Lease Acquisition Circulars.⁸

(1) GSA Leasing - Current Processes

⁶ In March 2017, GSA's Office of Leasing issued Leasing Alert LA-FY17-06 requiring Lease Contracting Officers (LCOs) to determine whether the ownership of leased space is identified as a foreign-owned entity and to notify the client agency in such instances, so that the agency can take any needed security mitigation measures. The Leasing Alert outlined the procedures to make this determination which involved a review of the entity's SAM registration; the Leasing Alert also required this review for all lease procurements and novations, regardless of the Facility Security Level (FSL). In October 2018, GSA added a "Foreign Ownership and Financing Representation," to be included with all Request for Lease Proposals (RLP) packages issued for prospectus-level lease projects. This "paper" representation required the offeror to confirm both foreign ownership and foreign financing

⁷ GSA's Leasing Desk Guide, <https://www.gsa.gov/real-estate/real-estate-services/leasing-policy-procedures/policy-and-tools/policy/leasing-desk-guide-and-other-policy-information/leasing-desk-guide-pdf>.

⁸ GSA's Leasing Alerts and Lease Acquisition Circulars (LAC), <https://www.gsa.gov/real-estate/real-estate-services/leasing-policy-procedures/policy-and-tools/policy/leasing-desk-guide-and-other-policy-information/leasing-alerts-and-lease-acquisition-circulars-lac>.

Regardless of who owns the leased space, Federal agencies are already taking risk management measures appropriate for the security level of the space. The GSA Leasing Desk Guide⁹ outlines requirements and standards for new and replacement space. In Chapter 19 (issued in 2012), it provides instructions for competitive procurements based on the Interagency Security Committee (ISC),¹⁰ Physical Security Standards, and it outlines the Public Buildings Service's (PBS) responsibilities for performing background investigations on the lessors' contractors. Additionally, GSA Leasing Alert LA-21-10,¹¹ issued on August 11, 2021, revised GSA's security documents for leased space to align with the ISC's updated (2019) countermeasures.

In addition, a 2018 GSA Leasing Alert,¹² provided required and recommended countermeasures for lessors related to cybersecurity protections and precautions in leased facilities. It establishes lease language that prohibits lessors from connecting any portion of their building and access control systems (BACS) to any

⁹ The Desk Guide chapters contain authorities, policies, technical and procedural guides, and administrative limitations governing the acquisition by lease of real property. Chapter 19 is specific to security requirements.

¹⁰ A Federal committee dedicated to the protection of Federal civilian facilities in the United States. It has 21 primary member agencies and 30 associate member agencies. The ISC has developed standards applicable to all civilian Federal facilities, including leased facilities.

¹¹ GSA's Leasing Alerts and Lease Acquisition Circulars (LAC) LA-21-10 https://www.gsa.gov/cdnstatic/Real_Estate_Acquisitions/Leasing_Alert_21-10_Revisions_to_FSL_Templates_and_SecUP_rev__8112021c.pdf.

¹² LA-FY18-05, *Cybersecurity Measures for Leased Facilities*, https://www.gsa.gov/cdnstatic/Real_Estate_Acquisitions/Leasing_Alert_%28LA-FY18-05%29_-_Cybersecurity_Measures_for_Leased_Facilities.pdf.

federally-owned or operated IT network and requires notification for cybersecurity incidents that impact a federal tenant's safety, security, or proper functioning. The lease language also outlines recommended cybersecurity measures that lessors are encouraged to follow.

Lessors are already currently required to report certain ownership information. As previously outlined, GSA currently collects foreign ownership information for potential lessors, including immediate or highest-level owners, and provides such information to tenant agencies. While this rule requires additional information related to the lessor's beneficial ownership, the review of owner detail has already been in place and is a requirement Federal lessors are familiar with.

(2) GSA Leasing - General Security Framework

As outlined in the GSA Leasing Desk Guide, the facility security level (FSL)¹³ for each space requirement is set by the Department of Homeland Security-Federal Protective Service (FPS) and the client agency, in consultation with the GSA as part of the requirements development phase of a lease acquisition. If the client agency and FPS have not already conferred, GSA must coordinate with the necessary parties to set the appropriate level of security before the solicitation is drafted. The Desk Guide states that GSA Leasing

¹³ A categorization based on the analysis of several security-related facility factors.

acquisition members must maintain contact as necessary with the appropriate FPS inspector throughout the lease administration. The facility security level designation does not change solely based on lessor ownership information collected via this rule.

(3) GSA Leasing - Determining Countermeasures

GSA follows the Interagency Security Committee (ISC) provided standard for Physical Security Criteria (PSC) for Federal Facilities.¹⁴ This standard establishes baseline physical security measures for each designated FSL. This standard defines the process for determining the appropriate security measures; it also covers any uncommon measures required to address the unique risks at a particular facility. The GSA Desk Guide currently uses the PSC to prescribe the process for determining appropriate countermeasures for a facility. Adherence to this process (1) ensures that all security criteria will be considered; (2) defines the relationship between the levels of risk determined for each undesirable event and; (3) mitigates risk through countermeasures that provide a commensurate Level of Protection (LOP). The lessor ownership information does not affect the PSCs for Federal Facilities and therefore GSA does not anticipate this rule to have a significant impact on the security standards used by GSA tenants.

¹⁴ See Cybersecurity and Infrastructure Security Agency (CISA) ISC Standard, March 2021, <https://www.cisa.gov/isc-policies-standards-best-practices>.

(c) Compliance Plan Estimated Due to Proposed Rule

GSA assumes the following steps would most likely be part of a lessor's plan that would need to be developed by any entity to stay in compliance with the revised representation clause at GSAR 552.270-33:

1. Regulatory Familiarization.

The entity must read and understand the GSAR rules and the resulting necessary actions for compliance.

2. Workforce Training.

The entity must educate its purchasing/procurement professionals¹⁵ to ensure that they are familiar with the revised representation and their disclosure requirements (as applicable).

3. Compliance with the Revised Representation Clause.

The entity must identify and disclose whether the entity does or does not have a beneficial owner of the leased space and, if so, whether that beneficial owner is a foreign person. If an affirmative disclosure is made, and if the Federal lessee is assigning the building or other improvement that will be used for high-security space to a Federal tenant, the Federal tenant shall be notified of the disclosure made in the

¹⁵ GSA estimates that the purchasing/procurement professional requiring training as a result of this rule on average would be equal to a mid-career professional. The equivalent labor category used to capture cost estimates therefore is a GS-12 Step 5, or Journeyman Level 1.

representation clause prior to award of the lease or approval of the novation agreement.

(d) Benefits

This Act requires the identification of all individuals who own or benefit from partial ownership of a property that will be leased by the federal government for high-security use. The statute is in response to a 2017 Government Accountability Office (GAO) report which indicated that Federal agencies were vulnerable to espionage and other intrusions because foreign actors could gain unauthorized access to spaces used for classified operations or to store sensitive data. Agencies store law enforcement evidence and other sensitive data and are often unaware of foreign ownership of their office spaces. While many of the foreign owners identified in the 2017 GAO report were companies based in allied countries such as Canada, Norway, Japan, or South Korea, other properties were owned and managed by entities based in more adversarial nations. The report noted Chinese-owned properties, in particular, presented security challenges because of the country's proclivity for cyberespionage and the close ties between private sector companies and the Chinese Government. The GAO report highlighted the dangers posed by these properties, indicating that "leasing space in foreign-owned buildings could present security risks

such as espionage, unauthorized cyber and physical access to the facilities, and sabotage.”

The United States faces an expanding array of foreign intelligence threats by adversaries who are using increasingly sophisticated methods to harm the Nation. Threats to the United States posed by foreign intelligence entities are becoming more complex and harmful to U.S. interests. Foreign intelligence actors are employing innovative combinations of traditional spying, economic espionage, and supply chain and cyber operations to gain access to critical infrastructure and steal sensitive information and industrial secrets. The exploitation of key supply chains by foreign adversaries represents a complex and growing threat to strategically important U.S. economic sectors and critical infrastructure.¹⁶

Additionally, by requiring “Beneficial Owner” information in the representation clause, GSA will benefit by better understanding how an individuals’ ownership position can provide them access that could prove problematic for certain agencies. Congress underscored that money launderers and others involved in commercial activity intentionally conduct transactions through corporate structures in order to evade detection, and may layer such structures across various secretive jurisdictions such that each time an investigator obtains

¹⁶ *National Counterintelligence Strategy of the United States of America 2020-2022.*

ownership records for a domestic or foreign entity, the newly identified entity is yet another corporate entity, necessitating a repeat of the same process.¹⁷ The ability to engage in activity and obtain financial services in the name of a legal entity without disclosing the identities of the natural persons who own or control the entity—the natural persons whose interests the legal entity most directly serves—enables those natural persons to conceal their interests. And as the Treasury’s Financial Crimes Enforcement Network (FinCEN) has noted previously, such concealment “facilitates crime, threatens national security, and jeopardizes the integrity of the financial system.”¹⁸ The goal of the Act is to close security loopholes by directing the GSA to design a verification system that identifies a property’s owners if the space would be used for high-security purposes. While GSA and other Federal agencies have made positive changes in response to GAO’s 2017 report, this rule will help support current best practices being followed more uniformly throughout the Federal government.

Finally, this rule ensures that GSA will have the ability to obtain information on foreign ownership and provide it to relevant Federal tenants.

(e) Public Costs

¹⁷ Corporate Transparency Act Section 6402(4).

¹⁸ *Notice of Proposed Rulemaking: Customer Due Diligence Requirements for Financial Institutions*, 79 FR 45151, 45153 (August 4, 2014).

During the first and subsequent years after publication of the rule, lessors will need to learn about the representation clause and its requirements. GSA estimates this cost by multiplying the time required to review the regulation and guidance implementing the rule by the estimated compensation of a purchasing/procurement mid-career professional. The equivalent labor category used to capture cost estimates therefore is a GS-12 Step 5.

A. To estimate the aggregate burden to Government lessors of complying with the rule, the number of lessors that will be impacted was calculated using numbers pulled from GSA's records and databases.¹⁹ As of August 2021, GSA has approximately 7,860 leases totaling approximately 183,000,000 in Rentable Square Footage (RSF) and approximately \$5,600,000,000 in annual rent (\$2,800,000,000 of that total represents small entities). Of the 7,860, approximately 1,263²⁰ (or 16 percent) of the leases are for high-security lease space (lease space in a facility with a security level of III, IV, or V) totaling approximately 87,000,000 in RSF and approximately \$3,000,000,000 in annual rent. Approximately 68 percent²¹ of the leasing entities are small entities. High-security

¹⁹ If not otherwise stated, numbers related to leases are provided by the GSA Office of Leasing through surveying their internal databases.

²⁰ The GSA Office of Leasing provided this number by surveying their internal database.

²¹ This information is based on internal inventory data sources provided by the GSA Office of Leasing.

leases with these small entities represents \$1,370,000,000 in annual rent covering approximately 37,000,000 RSF.

B. GSA also delegates leasing authority to several agencies, which are required to follow GSA's policies. GSA estimates there are 5,000²² buildings represented by these agencies with Delegated Leasing Authority from GSA. GSA does not have data available that identifies which of these are for high-security lease space. GSA assumes that these delegated agencies have a similar profile to GSA's for high-security leased space to total portfolio space, i.e., 16 percent. This would bring the total number of high-security lease space for delegated agencies to 800 (5,000 x 16 percent). GSA also assumes the same profile for small entities of 68 percent.

C. Based on historical data maintained by GSA's Office of Leasing, GSA estimates that 6 percent of its high-security leased space will be solicited for a new contract each year (6 percent of 1,263 = 76 leases). These solicitations result from a mix of expiring high-security leases or new requirements for high-security facilities. GSA assumes these trends will continue for the time horizon outlined by this regulatory impact. Based on historic bid rates and high current vacancy levels, GSA further estimates that 3 lessors will make offers for these high-security lease procurement for a total of 228

²² This information is based on internal inventory data sources provided by the GSA Office of Leasing.

offers (76 high-security leases awarded * 3 lessors competing for each solicitation. $76 * 3 = 228$) GSA assumes the same profile for delegated facilities.

D. Since 2014, GSA has averaged approximately 31 renewal options per year for high-security leases (equal to approximately 17 percent of all renewals options during the same period) and averaged approximately 106 extensions for existing high-security leases (also equal to approximately 17 percent of all extensions during the same period). GSA assumes the same trend will continue in subsequent years. GSA assumes the same profile for delegated facilities.

E. GSA processed 380 novations from May 1, 2020 to April 30, 2021^{23,24} (therefore approximately 5 percent of leases resulted in a novation ($380/7,860$)). GSA does not have data on how many of those were related to FSL III, IV, or V. GSA will assume 16 percent of those novations were for FSL III, IV, or V leases. Therefore, it is assumed 61 novations were processed for high-security leases in the last year.

A breakdown is provided in the table below.

Par Above		GSA	Delegated Authority Agencies
A,B	Leased Space	7,860	5,000

²³ This information is based on internal inventory data sources provided by the GSA Office of Leasing.

²⁴ GSA does not have data on how many novations other agencies with Delegated Leasing Authority processed.

A,B	High-Security (HS) Space Leases (16 percent)	1,263	800
	Total HS Portfolio	1,263	800
	Existing HS Lease Baseline	1,263	800
	Combined HS Lease Baseline	2,063 (1,263 + 800)	
C	New Procurements (6 percent HS)	76	48
C	New Offers (x3)	228	144
	Total New Responses	228	144
D	Renewals (17 percent HS)	31	3
D	Extensions (17 percent HS)	106	3
E	Novations (5 percent Leases)	380	38
E	High-Security Space Novations (16 percent)	61	6
	Total HS Novations	61	6
	New HS Lease Baseline	426 (228+3 1+106+ 61)	156 (144+3+3+6)
	Combined New HS Lease Baseline	582 (426 + 156)	

Steps to Compliance:

1. Regulatory Familiarization

Below is a list of compliance activities related to regulatory familiarization that GSA anticipates will occur:

a. Familiarization with GSAR 552.270-33, Foreign Ownership and Financing Representation for High-Security Leased Space

i. GSA estimates that it will take existing high-security lessors approximately 0.5 hours²⁵ each to familiarize themselves with the revised GSAR representation. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$86,900²⁶ (= 0.5 hours × \$84.16²⁷ × 2,063). Of the 2,063 lessors impacted by this part of the rule, GSA assumes that 68 percent, or approximately 1,403 lessors, are small entities.

After the initial familiarization in the first year for each current awardee or subsequent awardee, GSA estimates it will take 15 minutes (0.25 hours²⁸) to stay familiar with the representation. Therefore, GSA calculated the total estimated cost for this part

²⁵ The hours estimated are an assumption based on historical familiarization hours and subject matter expert judgement. Subject matter experts include representatives from GSA's Office of Leasing, including Realty Specialists and Leasing Contracting Officers.

²⁶ Totals are rounded.

²⁷ This hourly rate, \$84.16, is the 2021 GS rate for a GS-12 Step 5 of \$42.08 per hour (using the rate for the rest of the United States) adjusted upward by 100 percent to account for fringe benefits and overhead.

²⁸ The hours estimated are an assumption based on historical familiarization hours and subject matter expert judgement. Subject matter experts include representatives from GSA's Office of Leasing, including Realty Specialists and Leasing Contracting Officers.

of the rule to be \$43,400 ($= 0.25 \text{ hours} \times \$84.16 \times 2,063$).

ii. GSA estimates that new high-security lessors each year will take approximately 0.5 hours²⁹ each to familiarize themselves with the revised GSAR representation. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$24,500 ($= 0.5 \text{ hours} \times \84.16×582). Of the 582 lessors impacted by this part of the rule, GSA assumes that 68 percent, or approximately 396 lessors, are small entities.

The total estimated cost to become familiar with the revised representation clause (GSAR 552.270-33) is estimated to be \$86,900 for the existing high-security lessors. In subsequent years, this cost is estimated to be \$68,000 for new high-security lessors annually.

2. Implementation of Workforce Training

The entity must educate its purchasing/procurement professionals to ensure that they are familiar with the representation and their disclosure requirements (as applicable).

²⁹ The hours estimated are an assumption based on historical familiarization hours and subject matter expert judgement. Subject matter experts include representatives from GSA's Office of Leasing, including Realty Specialists and Leasing Contracting Officers.

a. GSA estimates that it will take existing high-security lessors approximately 3 hours³⁰ each to train their workforce on the revised representation clause at GSAR 552.270-33. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$521,000 (= 3 hours × \$84.16 × 2,063). Of the 1,263 lessors impacted by this part of the rule, GSA assumes that 68 percent, or approximately 1,403 lessors, are small entities.

After the initial training in the first year for each current awardee or subsequent awardee, GSA estimates it will take 15 minutes (0.25 hours³¹) to conduct continuing additional workforce training. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$43,400 (= 0.25 hours × \$84.16 × 2,063).

b. GSA estimates that new high-security lessors each year will take approximately 3 hours each to train their workforce on the representation clause at GSAR 552.270-33. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$147,000 (= 3 hours × \$84.16 × 582). Of the 582

³⁰ The hours estimated are an assumption based on historical familiarization hours and subject matter expert judgement. Subject matter experts include representatives from GSA's Office of Leasing, including Realty Specialists and Leasing Contracting Officers.

³¹ The hours estimated are an assumption based on historical familiarization hours and subject matter expert judgement. Subject matter experts include representatives from GSA's Office of Leasing, including Realty Specialists and Leasing Contracting Officers.

lessors impacted by this part of the rule, GSA assumes that 68 percent, or approximately 396 lessors, are small entities.

The total estimated cost to implement workforce training for the revised representation clause (GSAR 552.270-33) is estimated to be \$521,000 for the existing high-security lessors. In subsequent years, this cost is estimated to be \$190,000 for new high-security lessors annually.

3. Compliance with Clauses

a. GSAR 552.270-33, Foreign Ownership and Financing Representation for High-Security Leased Space

i. GSA estimates that it will take existing high-security lessors approximately 0.5 hours³² each to complete the additional disclosure at paragraph (e)(1) of the representation clause. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$86,800 (= 0.5 hours × \$84.16 × 2,063). Of the 2,063 lessors impacted by this part of the rule, GSA assumes that 68 percent, or approximately 1,403 lessors, are small entities.

ii. GSA estimates that new high-security lessors each year will take approximately 0.5 hours each to complete the additional disclosure at paragraph

³² The hours estimated are an assumption based on historical familiarization hours and subject matter expert judgement. Subject matter experts include representatives from GSA's Office of Leasing, including Realty Specialists and Leasing Contracting Officers.

(e)(1) of the representation clause. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$24,500 (= 0.5 hours × \$84.16 × 582). Of the 582 lessors impacted by this part of the rule, GSA assumes that 68 percent, or approximately 396 lessors, are small entities.

iii. GSA further estimates that of the existing high-security lessors, 10 percent³³ (or 206 lessors) will respond affirmatively to paragraph (e)(1) of the representation clause that the offeror “does” have a “beneficial owner” and will be required to complete the additional information at paragraph (e)(2). GSA estimates that it will take these offerors an additional 6 hours³⁴ to complete those various sections of the representation clause. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$104,000 (= 6 hours × \$84.16 × 206). Of the 206 lessors impacted by this part of the rule, GSA assumes that 68 percent, or approximately 140 lessors, are unique small entities.

iv. GSA estimates that of the new high-security lessors each year, 10 percent³⁵ (or 58 lessors) will

³³ The amount of lessors impacted is an assumption based on subject matter expert judgment.

³⁴ The hours estimated are an assumption based on historical familiarization hours and subject matter expert judgement. Subject matter experts include representatives from GSA’s Office of Leasing, including Realty Specialists and Leasing Contracting Officers.

³⁵ The amount of lessors impacted is an assumption based on subject matter expert judgment.

respond affirmatively to paragraph (e)(1) of the representation clause that the offeror “does” have a “beneficial owner” and will be required to complete the additional information at paragraph (e)(2).

Thus, approximately 58 lessors (10 percent of 582) need to fully complete GSAR 552.270-33. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$28,800 (= 6 hours × \$84.16 × 58). Of the 58 lessors impacted by this part of the rule, GSA assumes that 68 percent, or approximately 39 lessors, are small entities.

After the existing and new high-security lessors complete the representations, GSA estimates it will take 15 minutes (0.25 hours³⁶) to update any information as necessary and as required annually. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$47,700 (= [0.25 hours × \$84.16 × 2,063] + [0.25 × \$84.16 × 206]).

The total estimated cost to complete the representation clause is estimated to be \$191,000 the existing high-security lessors. In subsequent years, this cost is estimated to be \$101,000 for new high-security lessors annually.

4. Public Total Costs

³⁶ The hours estimated are an assumption based on historical familiarization hours and subject matter expert judgement. Subject matter experts include representatives from GSA’s Office of Leasing, including Realty Specialists and Leasing Contracting Officers.

The total cost of the above Cost Estimate is \$799,000 in the first year after publication.

The total cost of the above Cost Estimate in subsequent years is \$359,000 annually.

The following is a summary of the estimated costs calculated for a 10 year time horizon in perpetuity at a 3- and 7-percent discount rate:

SUMMARY	Total Costs
Present Value (3 percent)	<u>\$3,491,000</u>
Annualized Costs (3 percent)	<u>\$409,000</u>
Present Value (7 percent)	<u>\$2,934,000</u>
Annualized Costs (7 percent)	<u>\$418,000</u>

GSA notes that this rule does not authorize GSA lease contracting officers to use the information disclosed by offerors as a differentiating factor for selection of a lease award, nor does it authorize GSA to terminate a lease, prevent a novation, or otherwise decline to make an award based on the disclosure. As such, GSA estimates that this rule will not result in these activities, and therefore no moving costs have been included in this regulatory impact analysis.

GSA acknowledges that there is uncertainty underlying these estimates, including elements for which an estimate is unavailable given inadequate information. As more information becomes available, including through comment in response to this document, GSA will seek to update these estimates which could increase the estimated costs.

(f) Government Cost Analysis

During the first and subsequent years after publication of the rule, leasing acquisition members (which includes a combination of Leasing Contracting Officers, Lease Administration Managers, Realty Specialists, and General Counsel) will need to learn about the representation clause and its requirements. GSA estimates this cost by multiplying the time required to review the regulations and guidance implementing the rule by the estimated compensation, on average, of a GS-12 leasing acquisition member. GSA assumes that leasing acquisition members will, on average, stay consistent in subsequent years. Numbers and assumptions apply to delegated agencies as well.

GSA anticipates several areas of impact as a result of this rule. These impacts mirror the public impacts and will appear as regulatory familiarization, workforce training, and time to review compliance with clauses. These costs are justified in light of the compelling national security objective that this rule will advance.

For consistency, the number of leases to be reviewed match the numbers in the "Existing HS Lease Baseline" row (2,063 combined) and "New annual Lease Baseline" row (582 combined) found in table in section VI.(e).

1. Regulatory Familiarization

a. GSA estimates that it will take approximately 722 leasing acquisition members 0.5 hours to become familiar with the revised GSAR 552.270-33 representation. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$30,400³⁷ (= 0.5 hours × \$84.16 × 722).

After the initial familiarization, GSA estimates it will take 15 minutes (0.25 hours) to stay familiar with the revised representation in subsequent years. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$15,200 (= 0.25 hours × \$84.16 × 722).

2. Workforce Training

The Government must educate its leasing acquisition members to ensure that they are familiar with the representation and clause and how to review and act on the submitted information, access requests, and written procedures.

a. GSA estimates that it will take approximately 722 leasing acquisition members 0.5 hour to complete

³⁷ All totals in the Government Cost Analysis section are rounded.

training related to the revised GSAR 552.270-33 representation. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$30,400 (= 0.5 hours × \$84.16 × 722).

After the initial training, GSA estimates it will take 15 minutes (0.25 hours) to maintain training related to the revised representation. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$15,200 (= 0.25 hours × \$84.16 × 722).

3. Review of Compliance with Clauses

a. GSAR 552.270-33, Foreign Ownership and Financing Representation for High-Security Leased Space

i. GSA estimates that it will take leasing acquisition members approximately 10 minutes (0.17 hours) to review the representation at paragraph (e)(1) of the revised representation clause at GSAR 552.270-33 for existing high-security lessors. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$29,500 (= 0.17 hours × \$84.16 × 2,063).

ii. GSA estimates that for new high-security lessors each year, it will take leasing acquisition members approximately 10 minutes (0.17 hours) to review the representation at paragraph (e)(1) of the revised representation clause GSAR 552.270-33.

Therefore, GSA calculated the total estimated cost for this part of the rule to be \$8,300 (= 0.17 hours × \$84.16 × 582).

iii. GSA estimates that for existing high-security lessors, 10 percent (or 206 lessors) will respond affirmatively to paragraph (e)(1) of the representation clause that the offeror "does" have a "beneficial owner" and will be required to complete the additional information at paragraph (e)(2). GSA estimates that it will take leasing acquisition members 2.5 hours to complete the reviews on those various sections of the revised representation clause, notify the Federal tenant of the building or other improvement of any security concerns and necessary mitigation measures (if any) prior to award or approval of a novation agreement. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$43,300 (= 2.5 hours × \$84.16 × 206).

iv. GSA estimates 10 percent, or 58 lessors, of new high-security lessors each year will respond affirmatively to paragraph (e)(1) of the representation clause that the offeror "does" have a "beneficial owner" and will be required to complete the additional information at paragraph (e)(2). GSA estimates that it will take leasing acquisition members 2.5 hours to complete the reviews on those

various sections of the revised representation clause, notify the Federal tenant of the building or other improvement of any security concerns and necessary mitigation measures (if any) prior to award or approval of a novation agreement. Therefore, GSA calculated the total estimated cost for this part of the rule to be \$12,200 (= 2.5 hours × \$84.16 × 58).

4. Reduced Competition

GSA acknowledges the representation clause may lead to reduced competition. Some lessors may choose to exit the Federal market, particularly lessors that primarily lease to the private sector, because of the additional disclosure requirements, and the subsequent reduced level of competition may increase prices. However, estimated costs faced by contractors represent a small fraction of lease payments, and therefore GSA expects effects along these lines to be minimal.

5. Government Total Costs

The total cost of the above Cost Estimate is \$133,700 in the first year after publication. The total cost of the above Cost Estimate in subsequent years is \$51,000 annually.

The following is a summary of the estimated costs calculated for a 10 year time horizon at a 3- and 7-percent discount rate:

SUMMARY	Total Costs
Present Value (3 percent)	<u>\$515,000</u>
Annualized Costs (3 percent)	<u>\$60,400</u>
Present Value (7 percent)	<u>\$435,000</u>
Annualized Costs (7 percent)	<u>\$62,000</u>

GSA notes that this proposed rule does not authorize GSA lease contracting officers to use the information disclosed by offerors as a differentiating factor for selection of a lease award, nor does it authorize GSA to terminate a lease, prevent a novation, or otherwise decline to make an award based on the disclosure. As such, GSA estimates that this rule will not result in these activities, and therefore no moving costs have been accounted for in this regulatory impact analysis.

6. Overall Total Costs

The overall total cost of the above Cost Estimate, including both Public and Government costs, is \$932,000 in the first year after publication.

The overall total cost of the above Cost Estimate, including both Public and Government costs in subsequent years, is \$410,000 annually.

The following is a summary of the estimated overall total costs calculated for a 10 year time horizon at a 3- and 7-percent discount rate inclusive of both Public and Government costs:

SUMMARY	Total Costs
Present Value (3 percent)	<u>\$4,000,000</u>
Annualized Costs (3 percent)	<u>\$469,000</u>
Present Value (7 percent)	<u>\$3,400,000</u>
Annualized Costs (7 percent)	<u>\$479,000</u>

(g) Analysis of Alternatives

Alternative 1: GSA could take no regulatory action to implement this statute. However, this alternative would not provide any implementation and enforcement of the important national security measures imposed by the law. Moreover, the general public would not experience the benefits of improved national security resulting from the rule as detailed above in Section VI.(d). As a result, we reject this alternative.

Alternative 2: GSA could take a more stringent approach to the requirements of the Act and apply the new clauses to not only all GSA leases and delegated leases for FSL III, IV, or V space but for all FSL designations. However, given the relatively low levels of risk at those facilities, as described by the ISC, compared with the costs and burden applying this revised representation clause clause,³⁸ no additional benefit would be gained. As a result, we reject this alternative.

GSA also considered issuing an acquisition letter, but concluded the best alternative was to issue this proposed rule directly implementing the statute and allowing for public comment, in addition to being consistent with previous rulemaking (GSAR 2021-G527).

(h) Specific Questions for Comment

To understand the exact scope of the impact of this rule and how this impact could be affected, GSA welcomes input on the following assumptions and questions regarding anticipated impact on affected parties.

Assumption 1: As previously stated, GSA assumes that most Federal lessors maintaining high-security leased space or Federal lessors that are competing for solicitations for high-security leased space are already familiar with the majority of the requirements of this

³⁸ As this Regulatory Impact Analysis only considers 2,063 high-security leases (or approximately 16% of the GSA leasing portfolio), it's reasonable to estimate that if the entire portfolio was included, costs could be approximately 5X more costly than currently shown.

rule, or, similarly, will not find the requirements of this proposed rule as anything significantly more than what is currently expected. GSA previously implemented ownership disclosures requirements through internal policy,³⁹ GSA's Request for Lease Proposals (or solicitations), GSA's guidance through its public-facing Leasing Desk Guide,⁴⁰ Leasing Alerts and Lease Acquisition Circulars,⁴¹ and GSAR Case 2021-G527.

Question 1: If this assumption is not valid, to what extent are the requirements in this rule, specifically the revised elements of GSAR 552.270-33, significantly different from what GSA has currently been doing as part of its procedures for foreign ownership disclosure?

Assumption 2: GSA estimates that this rule will impact mainly the Federal lessor industry.

Question 2: If this assumption is not valid, is there another industry(s) to which this rule will cause significant impact or disruption?

³⁹ In March 2017, GSA's Office of Leasing issued Leasing Alert LA-FY17-06 requiring Lease Contracting Officers (LCOs) to determine whether the ownership of leased space is identified as a foreign-owned entity and to notify the client agency in such instances, so that the agency can take any needed security mitigation measures. The Leasing Alert outlined the procedures to make this determination which involved a review of the entity's SAM registration; the Leasing Alert also required this review for all lease procurements and novations, regardless of the Facility Security Level (FSL). In October 2018, GSA added a "Foreign Ownership and Financing Representation," to be included with all Request for Lease Proposals (RLP) packages issued for prospectus-level lease projects. This "paper" representation required the offeror to confirm both foreign ownership and foreign financing

⁴⁰ GSA's Leasing Desk Guide.

⁴¹ GSA's Leasing Alerts and Lease Acquisition Circulars (LAC).

Assumption 3: The impact of this rule will not significantly change the way current Federal lessors interact with GSA.

Question 3: If this assumption is not valid, to what extent will this rule, specifically the revised elements of GSAR 552.270-33, change how you interact with GSA?

Assumption 4: The impact of this rule will not significantly reduce the number of lessors competing for High-Security Leased Space solicitations.

Question 4: If this assumption is not valid, to what extent will this rule, specifically the revised elements of GSAR 552.270-33, reduce the likelihood of you - lessor to the Federal Government for High-Security Leased Space - from not competing for future solicitations of High-Security Leased Space?

Assumption 5: The compliance activities, and associated costs, estimated by GSA are stated at Section VI.(e).

Question 5: Is there a compliance activity that GSA has failed to consider? If so, please specify the activity, explain the activity, describe the impact of the activity, and please estimate the annual cost of such activities and subsequent yearly activity costs.

Question 6: Is there a compliance activity that GSA has noted that is significantly understated (in terms of annual and subsequent costs)? If so, which compliance

activity and what specifically was understated? Please explain how the compliance activity should be estimated.

Assumption 7: Other agencies relying upon GSA's leasing authority have similar profiles of high security leases in their inventory

Question 7: What information is available to better estimate high security leases in other agency inventories?

Assumption 8: GSA sufficiently detailed all compliance requirements for the rule.

Question 9: What additional information or guidance do you view as necessary to effectively comply with this rule?

Question 10: What other challenges do you anticipate facing in effectively complying with this rule?

Question 11: What thoughts or observations would you like to share regarding foreign ownership, including beneficial ownership, for GSA to consider in subsequent rule-making?

Assumption 9: GSA's "beneficial owner" definition is not less stringent than the SEC definition (17 CFR 204.13d-3).

Question 12: Is this definition less stringent than the definition provided by the Secure Federal LEASEs Act definition? If so, how?

Question 13: Is there a different definition of "beneficial owner" that GSA should use as part of the

representation clause at GSAR 552.270-33? If so, what is the definition and why should it be used instead of the definition GSA has already drafted into GSAR 552.270-33?

VII. Executive Order 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is anticipated to be a significant regulatory action and, therefore, has been reviewed in accordance with section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. See Section VI for a regulatory impact analysis of the rule.

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a "major rule" may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. A major rule

cannot take effect until 60 days after it is published in the Federal Register. This rule is anticipated not to be a "major rule" under 5 U.S.C. 804(2).

IX. Regulatory Flexibility Act

The General Services Administration does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq.

However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed, and is summarized as follows:

The purpose of this rule is to implement certain requirements outlined in the Secure Federal LEASEs Act (Pub. L. 116-276) into the GSAR.

The objective of the rule is to prescribe appropriate policies and procedures to address the risks of foreign ownership of Government-leased real estate and requires the disclosure of ownership information for high-security space leased to accommodate a Federal agency. Representation clause GSAR 552.270-33 (representation) is being revised to include beneficial owner disclosures. The representation will be required in all novations, solicitations and contracts for leased space that (1) will be occupied by Federal employees for nonmilitary activities; and (2) have a facility security level of III, IV, or V.

The representation requirement at GSAR 552.270-33 will be incorporated into all new lease awards, options exercised for current leases, lease extensions, and ownership changes for high-security leased space. Except where otherwise provided, the revised representation statutory disclosure requirements shall apply with respect to any lease or novation agreement entered into on or after December 31, 2022, involving high-security leased space. That includes new, replacing, succeeding, and superseding leases, renewal options, extensions, and novations. This includes actions involving small entities. The representation requires offerors for high-security leased space to identify whether the offeror or lessor does or does not have a beneficial owner, and, if so, disclosure whether the beneficial owner is a foreign person. Further, if the offeror or lessor does represent it has a beneficial owner, they must represent the legal name of the person, their current residential or business street address, and the identifying number or document that verifies identity as a United States person, foreign person, or foreign entity. Awardees will also be required

to re-represent on an annual basis. This representation also applies upon change of ownership/novations.

As of August 2021, GSA has approximately 7,860 leases in total. Approximately 68 percent (5,345) of leasing entities were small entities. This information is based on internal inventory data sources. Approximately 1,263 of GSA portfolio leases are for high-security lease space (lease space in a facility with a security level of III, IV, or V). 76 leases per year are estimated to be solicited for new high-security space procurements. These solicitations result from a mix of expiring high-security leases or new requirements for high-security facilities. Using the approximation above (68 percent), GSA estimates that for the 1,263 lessors already maintaining leased space at a Level III, IV, or V secure facility approximately 859 will be small entities ($1,263 \times 68$ percent). If GSA includes agencies with delegated leasing authority, the approximate number of total leases at a Level III, IV, or V is 2,063. This would increase the approximate number of small entities to 1,403 (from 859). For the estimated 76 solicitations in subsequent years, assuming 3 offerors per solicitation, approximately 155 will be submitted by small entities.

This rule does not duplicate, overlap, or conflict with any other Federal rules.

Because of the requirements outlined by the statute, it is not possible to establish different compliance or reporting requirements or timetables that take into account the resources available to small entities or to exempt small entities from coverage of the rule, or any part thereof. However, in order to reduce the burden imposed on the public, GSA is currently reviewing and investigating potential future implementation through electronic means, including externally (System for Award Management) or internally.

Entities that provide affirmative responses when completing the representation at 552.270-33 would be required to provide additional representation information in their offers for high-security leases.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. GSA invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

GSA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (GSAR Case 2021-G522) in correspondence.

X. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) does apply because the rule contains procedures with information collection requirements. The revised GSAR clause 552.270-33 now adds the requirement that offerors for high-security leased space identify whether the offeror does or does not have a beneficial owner(s), and if so, if the beneficial owner(s) is a foreign person(s).

The revised disclosure imposes additional information collection requirements to the paperwork burden previously approved under the existing OMB Control Number 3090-0324.

The annual reporting burden is estimated as follows:

1. Initial Disclosure

Baseline Representation

Estimated annual responses: 582

Estimated hours per response: 0.5

Additional Representation

Estimated annual responses: 58

Estimated hours per response: 6

Total Initial Response Burden Hours: 639

2. Annual Updates

Estimated annual responses: 582

Estimated hours per response: 0.10

Total Update Response Burden Hours: 58

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

List of Subjects in 48 CFR Part 552

Government procurement.

Jeffrey A. Koses,
Senior Procurement Executive,
Office of Acquisition Policy,
Office of Government-wide Policy,
General Services Administration.

Therefore, GSA proposes to amend 48 CFR part 552 as set forth below:

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

2. Amend section 552.270-33 by—

a. Revising the clause heading and the date of the clause;

b. In paragraph (a):

i. Adding the definitions “Beneficial Owner”, “Control”, and “Covered entity” in alphabetical order;

ii. Revising the definition of “Financing”; and

iii. In the definition of “Foreign entity”, revising paragraph (ii);

c. Removing from paragraph (b) the words “shall complete” and adding “shall complete and provide” in their place;

d. In paragraph (c) (2):

i. Removing from the introductory text the words “each entity” and adding “each person or entity” in their place; and

ii. Revising the table;

e. Removing paragraphs (c) (3) through (5);

f. Removing from paragraph (d) (1) the words "another entity" and adding "owners (person or entity)" in their place;

g. Revising the table in paragraph (d) (2);

h. Removing paragraphs (d) (3) through (5);

i. Redesignate paragraph (e) as paragraph (f);

j. Adding a new paragraph (e); and

k. In the newly designated paragraph (f) (3):

i. Removing from the introductory text the reference "(e) (1) or (2)" and adding "(f) (1) or (2)" in its place; and

ii. Revising the table.

The additions and revisions read as follows:

552.270-33 Foreign Ownership and Financing Representation for High-Security Leased Space.

* * * * *

FOREIGN OWNERSHIP AND FINANCING REPRESENTATION FOR HIGH-SECURITY LEASED

SPACE (DATE)

(a) * * *

Beneficial Owner means, with respect to a covered entity, an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise—

(i) Exercises substantial control over the covered entity; or

(ii) Owns or controls not less than 25 percent of the ownership interests of the covered entity.

Control means, with respect to a covered entity:

(i) Having the authority or ability to determine how a covered entity is utilized; or

(ii) Having some decision-making power for the use of a covered entity.

Covered entity means:

(i) A person, corporation, company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group; or

(ii) Any governmental entity or instrumentality of a government.

Financing means the process of raising, receiving, or providing funds, such as through debt or equity, for purposes of meeting the requirements of the Lease, including, but not limited to, acquisition, maintenance, or construction of, or improvements to, the property.

Foreign entity * * *

(ii) Government or governmental instrumentality that is not the United States or a state, local government, tribe, or territory within the United States.

* * * * *

(c) * * *

(2) * * *

Legal name	
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(do not use a "doing business as" name)	
Unique entity identifier (if available)	
Physical address (including country)	
Status of Immediate Owner: United States person, foreign person, or foreign entity	
Identifying number or document that verifies status as a United States person, foreign person, or foreign entity	

(d) * * *

(2) * * *

Legal name (do not use a "doing business as" name)	
Unique entity identifier (if available)	
Physical address (including country)	
Status of Highest-level Owner: United States person, foreign person, or foreign entity]	
Identifying number or document that verifies status as a United States person, foreign person, or foreign entity	

(e) *Beneficial owner.* (1) The Offeror or Lessor represents that it ☐ does or ☐ does not have a beneficial owner.

(2) If the Offeror or Lessor indicates "does" in paragraph (e)(1) of this clause, then enter the following information for the beneficial owner. If the Offeror or Lessor has more than one beneficial owner (e.g., joint venture), then the Offeror or Lessor shall provide the information for each person.

Legal name (do not use a "doing business as" name)	
Unique entity identifier (if available)	
Physical address (Including country)	
Status of Beneficial Owner: United States person, foreign person, or foreign entity	
Identifying number or document that verifies status as a United States person, foreign person, or foreign entity	

(f) * * *

(3) * * *

Legal name (do not use a "doing business as" name)	
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Unique entity identifier (if available)	
Physical address (including country)	
Status of Financing Entity: United States person, foreign person, or foreign entity	
Identifying number or document that verifies status as a United States person, foreign person, or foreign entity	

* * * * *

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